IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1282 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMLESHBHAI DHULABHAI KATARA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1282 of 2004

MR ZUBIN F BHARDA for Petitioner No. 1

MR HD DAVE, AGP, for Respondent No. 1-2

MR HS MUNSHAW for Respondent No. 3

NOTICE SERVED BY DS for Respondent No. 3,4

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 16/03/2004

ORAL JUDGEMENT

Learned advocate Shri Bharda seeks permission to delete respondent No. 4. Permission granted. Respondent No. 4 stands deleted.

2. Rule. Service of rule is waived by learned AGP Shri H.D. Dave for respondents Nos. 1 and 2 and by learned advocate Shri H.S. Munshaw for respondent No. 3. At the request of the learned advocates, the petition is finally heard today.

3. The facts giving rise to the present petition, in a nutshell, are as under :

3.1 The petitioner is a sarpanch of Madhava Gram Panchayat. A no-confidence motion was proposed to be moved against the petitioner sarpanch and he was requested to convene a meeting for discussion of the no-confidence motion. As the petitioner did not convene any meeting, a representation was made to respondent No. 3 so that respondent No. 3 can give necessary direction for convening a meeting, where the no-confidence motion can be discussed.

3.2 Ultimately, by an order dated 24.12.2003, respondent No. 3 directed the petitioner to convene a meeting within 15 days so that the no-confidence motion can be discussed at the said meeting. The petitioner was aggrieved by the said direction given by the TDO on 24.12.2003 and, therefore, he challenged the said direction before respondent no. 2 by filing a revision application on 30.12.2003. On the same day, the petitioner also submitted an application for interim stay.

4. According to the petitioner, neither the revision application has been heard till today, nor any order on the application for stay dated 30.12.2003 has been passed by respondent No. 2.

5. During the period when the revision application was pending before respondent No. 2, respondent No. 3 passed another order dated 22.1.2004 directing the petitioner to convene a meeting on 30.1.2004.

6. In the circumstances, the petitioner has approached this court with a prayer that implementation of the order dated 22.1.2004 be stayed because the petitioner had already approached respondent No. 2 challenging the order of respondent No. 3 dated 24.12.2003.

7. Learned advocate Shri Bharda appearing for the petitioner has submitted that if a meeting as directed by respondent no. 3 is convened, the revision application filed by the petitioner would become infructuous. He has, therefore, submitted that respondent No. 2 should be directed to hear the application for stay submitted by the petitioner.

8. Looking to the facts of the case, this court had passed the following order on 30.1.2004 :

> "Notice to the respondents returnable on 6th February, 2004. Ad-interim relief in terms of paragraph 7(C). In the meantime, it would be open to the respondent authorities to decide the application for stay filed in Revision Application No. 1/2004 even during the pendency of this petition."

9. It has been submitted to this court by the concerned advocates that even during pendency of this petition, the stay application submitted by the petitioner dated 30.12.2003 has not been heard by respondent No. 2.

10. Looking to the aforestated fact, it appears that the revision application filed by the petitioner would become infructuous if the application for stay is not disposed of by respondent No. 2 at an early date.

11. By an order dated 30.1.2004, implementation of the order dated 22.1.2004 passed by respondent No. 3 has been stayed and, therefore, no meeting for discussing the no-confidence motion against the petitioner can be convened.

12. Looking to the facts of the case, in the interest of justice, it is directed that respondent No. 2 should take final decision on the application submitted by the petitioner on 30.12.2003. After hearing the concerned parties, the said application shall be decided by respondent no. 2 at an early date and preferably within a period of three weeks from the date of receipt of this order by respondent No. 2. Till the said application is finally heard, respondent no. 3 shall not give any direction to the petitioner to convene any meeting for discussion of the no-confidence motion moved against the petitioner.

13. For the aforestated reasons, the order dated 22.1.2004 passed by respondent No. 3 is quashed and set

aside. Needless to say that after final order is passed on the stay application, it would be open to respondent No. 3 to take appropriate action after considering the nature of the order, which might be passed by respondent No. 2.

In view of the above direction, the petition stands disposed of as allowed. Rule is made absolute with no order as to costs. D.S. permitted.

(A.R. Dave, J.)

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